

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0520 ITC

Income Tax

For The Periods: 1992, 1993, And 1994

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Penalty - Negligence penalty.

Authority: IC 6-8.1-10-2

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is a regular C corporation controlled by a holding company in Europe. The taxpayer manufactures fine chemicals, intermediates, polymers, and additives as well as chemical specialities. The taxpayer maintains a public warehouse in Gary, Indiana. This warehouse functions as a regional distribution point for part of the taxpayer's product line.

I. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the Department's imposition of the negligence penalty for failure to pay income tax on throwback sales to Indiana for the adjusted gross income apportionment factor.

IC 6-8.1-10-2(d) states:

"If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on his return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

The taxpayer's tax department did not pay tax on throwback sales as erroneous information was given to the tax department from other taxpayer departments. This is taxpayer carelessness. Indiana regulation 45 IAC 15-11-2 (b) states carelessness is negligence.

FINDING

The taxpayer's protest is denied. The taxpayer has not demonstrated reasonable cause since carelessness is not deemed reasonable cause.